

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

ORION HEALTHCORP, INC., *et al.*,

Chapter 11
Case No.: 18-71748 (AST)
(Jointly Administered)

Debtors.

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HOWARD M. EHRENBURG, IN HIS CAPACITY
AS LIQUIDATING TRUSTEE OF ORION
HEALTHCORP, INC., *et al.*,

Plaintiff,

Adv. Pro. No.: 20-08048 (AST)

-against-

ELIZABETH KELLY

Defendant.

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STIPULATION AND CONSENT ORDER

WHEREAS, on August 23, 2023, Plaintiff Howard M. Ehrenberg, in his capacity as Liquidating Trustee of Orion HealthCorp., Inc. et al. (“Plaintiff”), served Third-Party Cliona Sotiropoulos (“Ms. Sotiropoulos”) with a Subpoena to Testify at a Deposition in a adversary proceeding titled *Howard M. Ehrenberg, in his capacity as Liquidating Trustee of Orion Healthcorp, Inc., et al. v. Elizabeth Kelly, et al.*, Adv. Pro. No. 20-08048 (Bankr. E.D.N.Y.) (“Adversary Proceeding”) commanding Ms. Sotiropoulos to produce documents and to appear via remote technology for a deposition on September 7, 2023 at 10:00 AM EST;

WHEREAS, on August 24, 2023, Plaintiff served Third-Party Frank Dos Santos (“Mr. Dos Santos”) with a Subpoena to Testify at a Deposition in the Adversary Proceeding commanding Mr. Dos Santos to produce documents and to appear via remote technology for a deposition on September 6, 2023 at 10:00 AM EST;

WHEREAS, on August 26, 2023, Plaintiff served Third-Party Michaela Kircher (“Ms. Kircher”) with a Subpoena to Testify at a Deposition in the Adversary Proceeding commanding Ms. Kircher to produce documents and to appear via remote technology for a deposition on September 8, 2023 at 10:00 AM EST;

WHEREAS, on September 12, 2023, Plaintiff served Third-Parties David Macklin and Sessler Macklin LLP (the “Macklin Parties,” and, together with Ms. Sotiropoulos, Mr. Dos Santos, and Ms. Kircher, the “Third Parties”) with Subpoenas to Testify at a Deposition in the Adversary Proceeding commanding the Macklin Parties to produce documents and to appear via remote technology for depositions on September 25, 2023 at 10:00 AM EST;

WHEREAS, Plaintiff and the Third Parties, through counsel, agreed to adjourn the depositions dates set forth in the subpoenas to accommodate the Third Parties’ schedules and to schedule the depositions for the following new dates: (i) Ms. Kircher’s deposition would occur via remote technology on November 14, 2023 at 10:00 AM EST; (ii) Ms. Sotiropoulos’ deposition would take place via remote technology on November 15, 2023 at 10 :00AM EST.; (iii) the Macklin Parties’ depositions would occur via remote technology on November 16, 2023 at 10:00 AM EST; and (iv) Mr. Dos Santos’ deposition would take place via remote technology on November 17, 2023 at 10:00 AM EST;

WHEREAS, on October 18, 2023, Plaintiff served amended subpoenas on the Third Parties with the new dates deposition dates as was agreed to by the Third Parties and Plaintiff (the “Amended Subpoenas”);

WHEREAS, despite previously agreeing to the dates set forth in the Amended Subpoenas, the Third Parties have indicated that that they will not be appearing for their depositions or producing the documents commanded in the Amended Subpoenas by the dates set forth therein;

WHEREAS, Plaintiff has advised the Third Parties, through counsel, that Plaintiff intends to take non-appearances should the Third Parties not appear for their depositions or produce documents in accordance with the Amended Subpoenas;

WHEREAS, Plaintiff and the Third Parties, through undersigned counsel, have discussed the foregoing and have reached an agreement to resolve this dispute via the entry of the within Consent Order;

AND now, this 13th day of November 2023, based on the consent of the Parties, and for other good and sufficient cause appearing hereto, it is hereby ORDERED that:

1. The Third-Parties shall produce all documents responsive to the Amended Subpoenas on or before November 17, 2023;
2. Ms. Kircher shall appear for her deposition via remote technology on November 29, 2023 at 10:30 AM EST;
3. Ms. Sotiropoulos shall appear for her deposition via remote technology on December 6, 2023 at 10:00 AM EST;
4. The Macklin Parties shall appear for their depositions via remote technology on December 5, 2023 at 10:00 AM EST;
5. Mr. Dos Santos shall appear for his deposition via remote technology on December 8, 2023 at 10:30 AM EST;
6. The times of the depositions set forth above shall not be changed absent mutual agreement by the Parties.
7. The Third Parties' failure to comply with this Consent Order shall be subject to contempt and sanctions.

STIPULATED AND AGREED to this 16th day November 2023:

/s/ Jeffrey P. Nolan, Esq.

Ilan D. Scharf, Esq.

Jeffrey P. Nolan, Esq.

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